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EFFECTIVENESS OF FEDERAL AGENCY ENFORCEMENT OF LAWS AND POLICIES AGAINST COMPLIANCE, BY BANKS AND OTHER U.S. FIRMS, WITH THE ARAB BOYCOTT

THIRTY-FIRST REPORT

BY THE

COMMITTEE ON GOVERNMENT OPERATIONS

SEPTEMBER 23, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF SUBMITTAL

HOUSE OF REPRESENTATIVES,
Washington, D.C., September 23, 1976.

Hon. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's thirty-first report to the 94th Congress. The committee's report is based on a study made by its Commerce, Consumer, and Monetary Affairs Subcommittee.

JACK BROOKS, *Chairman.*

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SEPTEMBER 23, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations, submitted the following

THIRTY-FIRST REPORT

BASED ON A STUDY BY THE COMMERCE, CONSUMER, AND MONETARY AFFAIRS SUBCOMMITTEE

On September 23, 1976, the Committee on Government Operations approved and adopted a report entitled "Effectiveness of Federal Agency Enforcement of Laws and Policies Against Compliance, by Banks and Other U.S. Firms, With the Arab Boycott." The chairman was directed to transmit a copy to the Speaker of the House.

I. INTRODUCTION

On June 8 and 9, 1976, the Commerce, Consumer, and Monetary Affairs Subcommittee held hearings into the effectiveness of Federal agency enforcement of the Export Administration Act of 1969 and other laws bearing on the participation, by U.S. financial institutions, in the Arab boycott of American firms doing business with Israel.

The subcommittee was concerned that while Congress had information on American industry's participation in the boycott, little was known about the unique role of U.S. financial institutions in these arrangements. Indeed, at the hearings, the Chairman of the Securities and Exchange Commission, Roderick Hills, testified that "From my experience both at the Commission and in the White House before coming to the Commission, we found considerable uncertainty as to precisely what kind of conduct was going on. We will be handicapped for some time, I think, until we have a base of information to give us some idea as to how various types of companies and various types of commerce are reacting to participation in the so-called boycott."

Moreover, the subcommittee believed that too little was known about the activities of bank regulatory agencies and the Commerce Department in monitoring the role of banks in the Arab boycott; and too little about the Securities and Exchange Commission's law enforcement and disclosure policies, practices and procedures relating to registered corporations engaging in boycott activities.

A brief statement of the principal responsibilities of the Commerce Department, the Securities and Exchange Commission and the Federal banking agencies in the boycott area, follows:

A. COMMERCE DEPARTMENT

Commerce Department regulations (15 CFR Part 396), "Restrictive Trade Practices or Boycotts," implementing the Export Administration Act, set forth the legal requirements with respect to "discriminatory" boycott restrictions, the policy requirements with respect to "economic" boycott restrictions and the reporting responsibilities imposed on U.S. firms by the Federal Government as to such boycotts. As a general matter, the regulations:

> Prohibit "all exporters and related service organizations" from "taking any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting a restrictive trade practice fostered or imposed by foreign countries against other countries friendly to the United States, which practice discriminates or has the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin;"
>
> Encourage and request all exporters and related service organizations "to refuse to take any action . . . that has the effect of furthering or supporting other restrictive trade practices or boycotts [1] fostered or imposed by foreign countries against any country . . ." friendly to the United States;
>
> Warn that "the boycotting of U.S. firms by another U.S. firm in order to comply with a restrictive trade practice by foreign countries against other countries friendly to the United States may constitute a violation of U.S. antitrust laws;" and
>
> Require exporters, any person handling any phase of the transaction for the exporter and related service organizations to report to the Commerce Department's Office of Export Administration, "any request for an action . . . that has the effect of furthering or supporting a restrictive trade practice or boycott. * * *"

A supplement to the Commerce Department regulations, which became effective December 1, 1975, required U.S. financial institutions to report directly to the Commerce Department any requests for a boycott action.[2]

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[1] The term "other restrictive trade practices or boycotts," is generally taken to encompass requests to U.S. citizens and firms to implement economic sanctions or to restrict business relationships that U.S. firms might otherwise undertake.

[2] Prior to Oct. 1, 1975, a response to the question whether the exporter intended to comply with the boycott request, was optional and was most often left unanswered. Effective Oct. 1, 1975, the Commerce Regulations were amended to require an answer to the question of compliance with the boycott request.

B. SECURITIES AND EXCHANGE COMMISSION

The SEC expressed to the subcommittee [3] its view that "the issues presented by the Arab boycott are serious matters and it strongly condemns participation in such boycotts by American citizens and enterprises. . . . In this regard the Commission intends to exercise fully its statutory powers in dealing with issues relating to the Arab boycott." While the SEC has numerous legal tools with which to enforce its position on the Arab boycott, one of its most important powers involves its ability to require a registered corporation to disclose, in its annual report, in registration statements or otherwise to the Commission, to stockholders or to the public, compliance or requests for compliance with the boycott.

The SEC's position is that:

> * * * disclosure in reports or registration statements filed with the Commission would be required only if, and to the extent that, this information is "material" to investors. A determination as to the "materiality" of the information in question necessarily would depend upon all the facts and circumstances of each particular case. For example, if compliance with the [boycott] requirement or conditions * * * would have a material adverse effect upon the income, assets or profits of the registrant, disclosure of the relevant facts would be required. Similarly, if the breach of the requirement or condition or disclosure of the fact that the registrant had agreed to such condition, would result in a material adverse effect upon the registrant's business, disclosure would also be required.

The SEC also advised the subcommittee of its authority over broker-dealers in the securities industry. SEC Chairman Hills testified that "we have made it clear, both privately and in our public statements to the various stock exchanges and to other self-regulatory organizations, that any broker-dealer who chooses to engage in an underwriting when there are aspects of that underwriting that require acquiescence in any kind of discriminatory practice will be subject to disciplinary action either by the exchanges or by the National Association of Securities' Dealers or by the Commission which has the authority to bring direct action against broker-dealers."

C. FEDERAL BANK REGULATORY AGENCIES

The supervisory powers of the Federal banking agencies with respect to the boycott issue were outlined before the subcommittee by the general counsel of the Federal Reserve Board, as follows:

> The principal enforcement power that the Board has is its authority under the Financial Institutions Supervisory Act of 1966 to issue cease and desist orders against State banks that are members of the Federal Reserve System.

[3] June 1, 1976, letter to Hon. Benjamin S. Rosenthal, Chairman of the House Subcommittee on Commerce, Consumer, and Monetary Affairs, from Roderick Hills, Chairman of the Securities and Exchange Commission.

> Under the Act such orders may be issued to remedy violations of law or regulations or unsafe or unsound banking practices. The Comptroller of the Currency and the Federal Deposit Insurance Corporation have identical powers with respect to national banks and non-member insured banks respectively. If the involvement of a U.S. bank in a boycott practice would constitute a violation of law or regulation by that bank, I believe that the Supervisory Act would empower the appropriate banking agencies to institute a cease and desist proceeding to terminate and remedy that practice. The cease and desist power could be invoked, therefore, where a bank took action in furtherance or support of a boycott against a friendly foreign country under circumstances if the effect was to discriminate against U.S. citizens on the basis of race, color, religion, sex or national origin. * * * While our cease and desist authority would empower the Board to take remedial action in such a case, the violation in issue would relate to the Commerce Department's export administration regulations and not to any present regulation of the Board. Congress has, of course, given the Department of Commerce the principal responsibility for implementing U.S. policy under the Export Administration Act.

In order to measure the extent of U.S. financial institutions' participation in the Arab boycott, the subcommittee requested boycott compliance data involving financial institutions from the Commerce Department [4] and from a number of major U.S. banks [5] doing international business. An examination of the nature of Commerce Department and Federal Reserve Board activities in the boycott area took place at subcommittee hearings on June 8 and 9, 1976. Information on the SEC's response to corporate participation in boycott activities was developed by an exchange of letters and by testimony from the agency on June 9.[6]

Witnesses testifying at the June 8 hearing were:

Edwin E. Batch, Jr., Vice President and Associate Counsel, Chemical Bank of New York.

Boris Berkovitch, Senior Vice President and Resident Counsel, Morgan Guaranty Trust Company, New York.

Rauer Meyer, Director, Office of Export Administration, Bureau of East-West Trade, Department of Commerce.

Witnesses testifying at the June 9 hearing were:

Roderick Hills, Chairman, Securities and Exchange Commission.

Jerome Hawke, General Counsel, Federal Reserve Board.

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[4] In a "Supplement to Export Administration Regulations No. 149, November 20, 1975." and effective December 1, 1975, the Commerce Department required reports from "all service organizations (such as banks, insurers, freight forwarders, and shipping companies) that became in any way involved in a restrictive trade practice request related to an export from the United States of commodities, services, technical data, or other information. Previously, service organizations were required to report such requests to the U.S. exporter, who was then required to report to the Office of Export Administration. Now, both the exporter and the service organization must report the receipt of such requests."

[5] The subcommittee requested boycott information from 15 U.S. banks which engage in substantial international business. Crocker National Bank of San Francisco refused to provide the requested data.

[6] Copies of the subcommittee letter to the SEC and the SEC's reply are reprinted in the hearing record.

II. Scope of Report

This report discusses the nature and extent of participation, by U.S banks, in the Arab boycott of American firms doing business in or with Israel. It looks at the manner in which the Department of Commerce gathers and utilizes boycott data involving financial institutions. The report also examines the manner in which the Commerce Department, Federal Reserve Board and the Securities and Exchange Commission enforce compliance with U.S. laws and policies bearing on the boycott issue.

III. Background

Payment for products and services produced or supplied by Americans and purchased by foreign importers is often accomplished through the issuance of letters of credit. Under this procedure, a foreign importer who wishes to buy goods from a U.S. firm will purchase, from his local bank, a letter of credit for the cost of those goods. The foreign importer's bank will then send that letter to a correspondent U.S. bank instructing it to pay the specified amount but only after the correspondent bank has determined that all the conditions set forth in the letter have been met. The bank issuing the letter guarantees the reimbursement of money advanced by the correspondent bank and the correspondent bank receives a fee based on a percentage of the total dollar value of the letter.

Letters of credit issued by foreign banks on behalf of Arab importers, frequently have required the U.S. exporter to present documents to the U.S. correspondent bank certifying that the firm has not engaged in any activities in violation of the Arab boycott of Israel. If the U.S. correspondent bank pays the exporter without receiving and confirming such certifications, it will not be reimbursed by the Arab bank issuing the letter of credit.

Commonly, certifications of an economic nature have required that the carrier of the merchandise is not on any Arab blacklist; that the goods to be exported are not of Israeli origin; that the supplier, vendor or manufacturer of any part of the merchandise is not on any Arab blacklist; that the firm is not the parent, subsidiary or affiliated company of a blacklisted firm, and that the insurer of the goods is not on a blacklist. Boycott restrictions of a discriminatory nature have required, for example, that no member of the firm be of the Jewish faith or that the goods, packaging or invoice do not bear the Star of David or any other such symbols.

The significance of letters of credit with boycott conditions as a staple of international trade, and the crucial role played by U.S. banks in giving effect to the Arab boycott, were set forth with clarity by Federal Reserve Board Chairman Arthur Burns in a letter to Commerce, Consumer, and Monetary Affairs Subcommittee Chairman Benjamin S. Rosenthal:[7]

> It is clear to me that banks in the United States play a crucial role in giving effect to the Arab boycott in this country * * * It is customary for importers in the Middle East to purchase goods from U.S. exporters to arrange for

[7] Letter of June 3, 1976.

payment by means of a letter of credit. Generally, a letter of credit will originate at a bank in the Middle East and will be confirmed by a correspondent bank in the United States. It is common for such letters of credit to require the exporter, as a condition of receiving payment under the letter of credit, to submit a certificate attesting to his compliance with some phase of the Arab boycott of Israel. Since the U.S. bank may not make a payment under the letter of credit unless this condition is complied with, the U.S. bank in a real sense gives effect to the boycott by agreeing to handle a letter of credit that embodies such terms.

IV. Findings and Conclusions

1. The Department of Commerce and the Federal Reserve Board have consciously undermined the government's policy—and their own efforts—to discourage banks and other U.S. firms from complying with Arab boycott restrictions of an economic nature.

In response to concerns from the New York Clearing House Association of major money market banks that a December 12, 1975, Federal Reserve Board statement imposed special legal obligations on banks not to comply with economic boycott restrictions in letters of credit, the Board issued a so-called "clarifying" letter stating that it was not the intention of the first letter "to create new legal obligations for banks." In a meeting sponsored by the New York Chamber of Commerce, the Commerce Department did not encourage banks to continue their refusal to process letters of credit with economic boycott restrictions; and instead advised a U.S. exporter to have the banks get in touch with the Department so that they can be told they are not prohibited from processing such letters.

2. As a consequence of this reluctant enforcement of the policy declaration set forth in the Export Administration Act of 1969, virtually all U.S. financial institutions doing international business willingly handle letters of credit embodying restrictive economic boycott conditions and directed against U.S. firms.

3. U.S. bank handling of letters of credit with economic boycott restrictions is increasing at a rapid pace and will continue to increase unless the Export Administration Act is amended to clearly outlaw such practices or the Commerce Department and the Federal banking agencies enforce more stringently and consistently the policy declaration of the Act.

4. There is evidence that a posture of resistance, by U.S. banks, to economic boycott demands contained in letters of credit from Arab nations would result in a significant reduction of such requests without an accompanying loss of bank business. In a number of instances known to the Subcommittee, resistance by U.S. banks to discriminatory boycott demands caused Arab importers to back down on those demands.

5. The Commerce Department's Office of Export Administration has been seriously remiss in failing to notify the Federal bank regulatory agencies of referrals to the Justice Department involving possible bank violations of prohibitions against compliance with civil rights-type boycott restrictions.

6. The Department of Commerce has failed to deploy sufficient manpower resources to the job of compiling and utilizing boycott reports received by the Department.

7. The Securities and Exchange Commission is to be commended for the forthright regulatory posture it has adopted in opposition to the Arab boycott of U.S. firms. Nevertheless, the SEC's case-by-case approach to the questions whether a registered firm's compliance with a boycott request is "material" and must therefore be disclosed, is inefficient and defeats the broad policy goal of the Export Administration Act to discourage such compliance. A more broad-based enforcement mechanism, such as the establishment of industry-wide rules, would result in a more effective and uniform disclosure policy.

8. The revised Commerce Department regulations (effective December 1, 1975), which require U.S. banks to report directly any involvement in a restrictive trade practice or boycott request and which prohibit compliance with boycott restrictions based on race, religion, color, sex or national origin, have been effective: (a) In producing a steady flow of reports from the financial community on its involvement in boycott requests; and (b) in causing bank management to screen carefully and reject boycott conditions in letters of credit that discriminate against U.S. citizens or firms on the basis of race, color, religion, sex or national origin.

9. The Commerce Department form (DIB–621P), used by U.S. banks to report their non-discriminatory boycott activities, is seriously deficient as to that portion utilized for recording whether a bank intends to comply with the boycott request.

Section C(11) of the form permits banks to check off a box ("d") stating that "The decision will be made by another party involved in the export transaction." In the second quarter of 1976, that box was checked in 2,217 letter of credit transactions as compared to 144 transactions in the first quarter.

Since the decision whether or not to advise or confirm exporter compliance with boycott conditions is an action that can only be taken by the U.S. correspondent bank, the enormous increase in the number of checkoffs of box "d" raises serious questions as to whether it is properly understood by the Commerce Department, by the banks or is meaningful as an indicator of bank boycott acquiescence.

V. Recommendations

1. Federal Reserve Board Chairman Arthur Burns stated that the Government's policy position against compliance with boycott conditions of an economic nature may "impose responsibilities upon private businesses that depend upon government licenses and privileges that are distinct from those that are imposed upon other businesses in which there is little or no government involvement;" and that "the commercial banking business—which benefits substantially from such activities of the U.S. Government as the provision of deposit insurance, the operation of the Federal Reserve System and the issuance of national bank charters—may well be viewed as a business having such special responsibilities." Moreover, the Office of Comptroller of the Currency and the Federal Deposit Insurance Corporation have

recognized that American banks have a special "public service function."

In view of the "special responsibilities" and unique "public service" character of American banks, recognized by the bank regulatory agencies, careful and immediate consideration should be given to the promulgation of regulations—either by the banking agencies or the Department of Commerce—which would require banks to observe strictly the policy of the U.S. Government against compliance with economic boycott restrictions.

2. The Department of Commerce and the Federal bank regulatory agencies should cease all activities that are inconsistent with the policy position of the United States against compliance with boycott conditions of an economic nature.

3. The Commerce Department should establish procedures for transmitting bank boycott data, including Justice Department referrals, to the relevant Federal banking agencies.

4. The Commerce Department should revise and clarify that portion of its boycott reporting form, DIB–621P, which requires a bank to indicate whether it intends to comply with a boycott request.

VI. Bank Participation in Arab Boycott

A. COMMERCE DEPARTMENT DATA

Pursuant to a November 20, 1975, "Supplement to Export Administration Regulations," and effective December 1, 1975, the Department of Commerce required all service organizations, including banks, to report directly to the Department's Office of Export Administration all requests calling for a restrictive trade practice related to an export from the United States. Previously, service organizations were required to report such requests to the U.S. exporter, who was then required to report to the Office of Export Administration.

At the subcommittee's hearing on June 8, 1976, the Director of the Commerce Department's Office of Export Administration reported to the subcommittee on the extent of boycott activities within the U.S. financial community.[8] The data provided to the subcommittee provided a valuable overall picture of U.S. bank participation in the Arab boycott of American firms. The Department reported that for the period December 1, 1975, through March 31, 1976, 115 banks reported 5,372 (letters of credit) transactions involving 10,784 requests[9] to participate in restrictive trade practices against U.S. firms and having a total dollar value of $836,840,000.00.

According to the Department, 80 percent of these requests originated in four Arab States: Saudi Arabia, United Arab Emirates, Kuwait and Iraq. U.S. banks reported compliance in 4,175 transactions, noncompliance in 288 transactions, "undecided" as to compliance in 3 transactions, and, "decisions will be made by another party involved in the export transaction" in 144 transactions. The fact of compliance or noncompliance was not indicated in the remaining 762 transactions.

[8] The data provided the subcommittee on June 8 was identified as "preliminary". Subsequently, on August 13, 1976, the Commerce Department provided the subcommittee with revised and updated data.

[9] Some letters of credit contain more than one boycott condition.

The Department reported that in the 288 transactions where noncompliance was reported, 197 involved requests which would likely be interpreted as discriminating against U.S. citizens in violation of Section 369.2 of the Export Administration Regulations.[10] In 324 instances, banks reported compliance with a request to participate in restrictive trade practices which the Department judged might be in violation of Section 369.2 of the Regulations.[11] However, the Department witness testified that it did not and does not intend to take any compliance action against these financial institutions because "most of these [possible violations] occurred prior to February 17, 1976, when the Department advised the business community that such requests were considered to have possible discriminatory effects."

On August 27, 1976, the Office of Export Administration reported to the subcommittee on bank participation in the Arab boycott for the second quarter of 1976 (April 1 through June 30) :

> 131 banks reported to the Department 8,026 (letter of credit) transactions involving 15,392 requests to advise or confirm restrictive trade practices against U.S. firms and involving the State of Israel and having a dollar value of $479,846,000. Banks reported noncompliance in 261 transactions, "undecided" as to compliance in 5 transactions, and "the decision will be made by another party involved in the export transaction" in 2,217 transactions.

The data submitted by the Department shows that for the 3-month period covering April 1 through June 30, 1976, versus the 4-month period December 1, 1975, through March 31, 1976, there had been a substantial increase in the numbers of banks participating in the Arab boycott and in the number of transactions and requests involving boycott restrictions.

B. DATA FROM BANKS

By letter dated May 19, 1976, the subcommittee requested data from 15 major U.S. banks doing a considerable volume of international business, on the nature and extent of their participation in the Arab boycott.[12] Letters were sent to the following banks:

Bank of America, N.A. (San Francisco).
First National City Bank (N.Y.).
Chase Manhattan Bank, N.A. (N.Y.).
Manufacturers Hanover Trust Company (N.Y.).
Bankers Trust Company (N.Y.).
Chemical Bank (N.Y.).
Irving Trust Company (N.Y.).
Continental Illinois National Bank & Trust Co. (Chicago).
Morgan Guaranty Trust Company (N.Y.).
Security Pacific National Bank (L.A.).
First National Bank of Chicago.
First Pennsylvania Bank, N.A. (Phila.).
European-American Bank & Trust Co. (N.Y.).

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[10] Section 369.2 prohibits compliance with or support of any practice or request for information "which practice discriminates or has the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex or national origin."

[11] These restrictive conditions made reference to the Star of David.

[12] The May 19, 1976, letter and the responses received by the subcommittee are reprinted in the hearing record.

Crocker National Bank (San Francisco).
Wells Fargo Bank, N.A. (San Francisco).

Except for Crocker National Bank of San Francisco, all of the above-listed banks cooperated with the subcommittee and provided the information requested. Following, is a statistical tabulation of the numbers and dollar value of letters of credit with boycott-related requests or conditions handled by the U.S. banks:

Bank	Period covered	Number of letters of credit	Amounts involved
1. Bank of America, NA (San Francisco)	Jan. 1, to May 31, 1976	2,556	$259,691,000.00
2. First National City Bank (New York)	Dec. 1, 1975 to Apr. 15, 1976.	235	10,524,291.00
3. Chase Manhattan Bank, NA (New York)	December 1975 to Mar. 31, 1976.	375	19,300,000.00
4. Manufacturers Hanover Trust Co. (New York).	Dec. 1, 1975 to Mar. 31, 1976.	178	[1] 12,195,832.15
5. Bankers Trust Co. (New York)	do	444	54,586,250.00
6. Chemical Bank (New York)	Oct. 1, 1973 to June 8, 1976.	2,500	90,000,000.00
7. Irving Trust Co. (New York)	Dec. 1, 1975 to Mar. 31, 1976.	1,393	[2] 55,262,088.00
8. Continental Illinois National Bank & Trust Co. (Chicago).	Oct. 1, 1973 through May 1976.	1,500	37,182,119.78
9. Morgan Guaranty Trust Co. (New York)	Dec. 1, 1975 to Mar. 31, 1976.	824	[3] 41,237,815.00
10. Security Pacific National Bank (Los Angeles. Security Pacific International Bank (Los Angeles).	Oct. 1, 1973 to May 31, 1976. Jan. 1, 1975 to May 31, 1976	471	30,052,179.00
11. First National Bank of Chicago	Jan. 1, to July 6, 1976	219	[4] 16,793,515.00
12. First Pennsylvania Bank, NA (Philadelphia)	Oct. 1, 1973 to June 3, 1976.	[5] 7	720,741.00
13. European-American Bank & Trust Co. (New York).	1973	118	2,850,384.00
	1974	510	28,352,749.00
	1975	391	49,214,988.00
	1976 through June 2, 1976	83	[6] 11,967,654.00
14. Wells Fargo Bank, NA (San Francisco)	Jan. 1 to July 6, 1976	184	[7] 22,722,307.00
Total		11,988	[8] 743,000,000.00

[1] The bank refused to participate in 10 letters of credit transactions with a dollar value of $1,545,157.77 because of discriminatory boycott conditions.
[2] The bank rejected 55 letters of credit totaling $3,261,832.00; 39 were subsequently amended to the satisfaction of the bank.
[3] The bank rejected 24 letters of credit totaling $1,539,717.00; 23 were subsequently amended to the satisfaction of the bank.
[4] The bank rejected 5 additional letters of credit totaling $262,637.00.
[5] 2 of these letters were returned to the issuing bank and not forwarded to the beneficiaries.
[6] In 1976 the bank rejected 20 letters of credit totaling $10,323,061.00.
[7] The bank rejected 5 additional letters of credit totaling $1,427,675.00.
[8] Approximate.

C. BANK COMPLIANCE WITH BOYCOTT

1. Economic restrictive trade practices

In his June 3, 1976, letter to subcommittee Chairman Rosenthal, Chairman Arthur Burns of the Federal Reserve Board stated that, "It is clear to me that banks in the United States play a crucial role in giving effect to the Arab boycott in this country. Since a U.S. bank may not make a payment under the letter of credit unless this [economic boycott] condition is complied with, the U.S. bank in a real sense gives effect to the boycott by agreeing to handle a letter of credit that embodies such terms."

It is clear from the subcommittee's review, that all or almost all U.S. banks doing substantial amounts of international business, handle letters of credit that embody economic-type restrictive trade prac-

tices.[13] During his testimony before the subcommittee, the Director of the Commerce Department's Office of Export Administration acknowledged widespread compliance, by U.S. banks, with the economic boycott:

> Mr. ROSENTHAL. Do the reports which the Department of Commerce has received from the banks indicate to you that they have handled letters of credit complying with the Arab boycott?
>
> Mr. MEYER. Yes. As I indicated, in 4,071 instances the banks reported that they had complied with the requests.[14]
>
> * * * * *
>
> Mr. DRINAN. Here we have the vast majority of banks complying. So in fact they are complying and submitting to the boycott. Will this change without legislation?
>
> Mr. MEYER. I would anticipate that the present pattern * * * would continue.[15]

Many of the banks which did acknowledge advising and confirming letters of credit with economic boycott conditions, justified their behavior on two bases: First, that participation in letters of credit with economic boycott conditions is not illegal under Federal statutes, rules or regulations; and, second, that refusal to honor such letters would impede the international flow of goods and services. For example, the vice president and associate counsel of Chemical Bank of New York testified that:

> Laws and regulations do not permit us to unilaterally change any terms or conditions in these incoming letters of credit. Our only option would be to refuse to deliver them to the exporter. The exporter then would have no bank assurance of being paid for his goods. By our refusal we would be restraining trade and creating a counter-boycott. This we believe, would be an undesirable and inappropriate position for a private institution such as Chemical Bank.

The senior vice president and resident counsel for Morgan Guaranty Trust Company of New York told the subcommittee that:

> As to the broader question whether congressional action is called for with respect to the economic boycott of Israel, the Administration has enunciated a position which, in our judgment, is consistent with the economic interests and foreign policy objectives of the United States.

All banks participating in letters of credit with boycott conditions made clear to the subcommittee their belief that their corporate conduct was in full compliance with U.S. laws and regulations. Bankers Trust Co. wrote that:

> We conduct a review, on a continuing basis * * * and we are confident that our letter of credit operations are in full

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[13] The subcommittee has been advised that the First National Bank of Minneapolis, the Northwestern National Bank of Minneapolis and the Continental Bank of Philadelphia refuse to advise and confirm letters of credit with economic boycott conditions.

[14] "Effectiveness of Federal Agencies' Enforcement of Laws and Policies Against Compliance, By U.S. Firms, with the Arab Boycott," hearings before the House Subcommittee on Commerce, Consumer, and Monetary Affairs, Committee on Government Operations, June 8, 1976, p. 7.

[15] Ibid., p. 10.

compliance with all appropriate laws, rules and regulations * * *.

Continental Bank of Illinois advised the subcommittee that:

> You may be assured that it has always been and continues to be the established policy of the bank to conduct its business operations in accordance with all appropriate legal requirements.

Bank of America, which handled 2,556 letters of credit containing economic boycott conditions with a value of $259 million between January 1 and May 31, 1976, even advised the subcommittee that it followed "the laws and enunciated policies of the United States to the best of our ability". It is difficult to understand how Bank of America could make such a claim when it is clearly an "enunciated policy of the United States" to discourage compliance by U.S. firms with economic boycott conditions.

It is, of course, clear from the data furnished by the Department of Commerce and 14 major international banks, that the handling of letters of credit with economic boycott conditions, by banks, is the rule of practice rather than exception. As indicated earlier in this report, a comparison of first and second quarter Commerce Department statistics demonstrates that the practice of bank handling of letters of credit with economic boycott restrictions is a growing phenomenon in this country.

2. Civil rights restrictive trade practices

Effective December 1, 1975, the Department of Commerce revised its Regulations to make illegal a limited category of boycott-related actions by U.S. firms that have the effect of furthering or supporting a restrictive trade practice that discriminates against U.S. citizens or firms "on the basis of race, color, religion, sex or national origin." Evidence available to the subcommittee indicates strict compliance, by U.S. financial institutions, with the prohibition against civil rights boycott conditions:

> Mr. ROSENTHAL. Did you review any of the reports you received from the banks to see whether there was discrimination against U.S. citizens on the [basis of race, color, religion, sex, or national origin]?
>
> Mr. MEYER. Yes.
>
> Mr. ROSENTHAL. Were there any examples of that?
>
> Mr. MEYER. No, sir.[16]

Banks testifying before or communicating with the subcommittee all indicated the existence of careful procedures designed to discover and reject discriminatory conditions in letters of credit. Bank of America issues memorandums to all of its officers warning against compliance with civil rights boycott conditions. Manufacturers Hanover Trust Co. of New York stated that "our practice is to closely monitor

[16] Ibid., p. 7. The Commerce Department witness indicated that there were instances in which boycott conditions contained references to the Star of David and that those instances may have been confirmed by U.S. Banks. However, the Commerce Department witness testified that in February of 1976, they made it clear to U.S. financial institutions that references to the Star of David were of a discriminatory kind prohibited by its regulations. Since that date, the Commerce witness advised that there has been no evidence of further U.S. bank confirmation of any such condition.

all transactions so as to insure our continuing rejection of any situation calling for a statement that may be construed as having any [discriminatory] effect." Continental Bank of Illinois wrote that adherence to its policies "is closely monitored by management." Careful screening of boycott conditions is evidenced in data furnished to the subcommittee by the Department of Commerce and by the banks. For example, between December 1, 1975, and March 31, 1976, Manufacturers Hanover Trust Co. refused to participate in 10 letters of credit transactions with a dollar value of $1.5 million because of the existence of discriminatory boycott conditions. Irving Trust Company of New York rejected 55 letters of credit totaling $3.2 million; Morgan Guaranty Trust Company rejected 24 letters of credit totaling $262,000; First Pennsylvania Bank of Philadelphia rejected two letters of credit; and European-American Bank and Trust Company of New York rejected 20 letters of credit totaling $10.3 million—all because of the existence of civil rights type discriminatory boycott conditions.

3. Effect of resistance to restrictive trade practices

One of the issues of obvious importance to those who administer and those who observe the provisions of the Export Administration Act, is what the effect would be on international trade and finance, of resistance by U.S. banks to the economic boycott. The Director of the Office of Export Administration was uncertain about the effect of a failure to comply:

> Mr. MEZVINSKY. What do you think would be the effect of a 100-percent U.S. failure to comply with the boycott?
>
> Mr. MEYER. I think it might have a sizable effect on our trade with the Mideast. It is an open question and I do not know how to evaluate the effect it would have on the boycott practices of the Arab countries.
>
> Mr. BROWN. You were somewhat hesitant in responding to the question of a colleague concerning the impact of total compliance of the U.S. financial institutions and firms with the Arab boycott. And you said that you thought it would have a significant impact. Is it not true that much of the trade that is carried on and that is subject to the Arab boycott could be carried on, although not as well perhaps, by other nations?
>
> Mr. MEYER. Yes, sir; I think so.[17]

Although the Commerce Department witness was somewhat tentative with respect to the possible disruptive effects of a 100-percent refusal to comply with the economic boycott, bankers generally believe that total resistance would result in the loss of business by U.S. firms:

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[17] In a Dec. 4, 1975, letter to subcommittee Chairman Rosenthal, the former Secretary of Commerce, Rogers Morton, provided similar reasons for the Department's refusal to exercise its authority to make illegal compliance with economic boycott conditions: "If such a prohibition were to be imposed by the Department, there is a strong possibility that the Arabs could and would turn toward other sources of supply . . . The resulting loss of trade could have an adverse impact on our balance of trade with the Middle East and increase unemployment in the U.S., at a time when this country is attempting to expand its trade with the Middle East. Such a prohibition against compliance with boycott requests would have only a very limited effect on the availability of supplies to the Arab countries and therefore there would be little pressure on the Arab states to abandon the boycott."

For example, the witness from Morgan Guaranty Trust Company had the following to say on the subject:

> Mr. BERKOVITCH. Mr. Chairman, the people who are responsible for the bank's business in that part of the world are generally of the opinion that to extend the prohibitions to the economic aspect of the boycott would be extremely disruptive of trade relations between those countries and the United States. That is their view.

Nevertheless, evidence was presented to the subcommittee which suggests that bank resistance to the economic boycott might not result in a substantial loss of business. Boris Berkovitch, senior vice president and resident counsel for Morgan Guaranty Trust Company of New York, reported to the subcommittee that between December 1, 1975, and March 31, 1976, the bank received 24 letters of credit with an aggregate dollar value of $1.5 million containing clauses in the category deemed unacceptable under the Commerce Department Regulations. Morgan Guaranty refused to process these letters of credit unless and until the offending clauses were removed by the issuing Arab banks. In 23 out of the 24 instances, the offending clauses were removed:

> Mr. ROSENTHAL. I am interested in your opinion in expanding on this event. If the Congress changed the law to make the economic boycott illegal and you continued to process letters of credit, do you think you would meet more resistance or would you meet the same kind of situation as the one in which you said "No" and had the restriction removed in 23 of the 24 cases?
>
> Mr. BERKOVITCH. We, I think, have to look at this from at least two standpoints. One is the information by high-level officials within the administration—State Department people, Treasury people, and Commerce people—which has been enunciated. It is their view——
>
> Mr. ROSENTHAL. No; I am asking for your view. I know their view; their view is easy.
>
> You were in a situation in your bank where you told these people that a particular clause was against regulations. And in 23 out of 24 situations, they withdrew that clause.
>
> In your opinion, if the Congress expanded the restrictions or expanded those areas in which it would become illegal, do you think the same pattern would evolve? Would, in 23 out of 24 cases, the offending language be removed?
>
> Mr. BERKOVITCH. It is speculative. I think that of the banks which issued the letters of credit in these 24 instances, at least 23 of them recognized that they were probably going beyond their own mandate which was, we believe, to participate in an economic boycott of Israel and not to introduce purely religious or racial factors into that boycott. At least 23 of them recognized that.
>
> We would have the gravest doubt as to whether they would respond in the same way were the economic aspects of the boy-

cott to be made unlawful for banks in this country and for exporters in this country.

Another demonstration of the willingness of Arab importers to cancel or revise boycott restrictions that run afoul of U.S. laws, was provided in data submitted to the subcommittee by Irving Trust Company of New York. It reported that during the first quarter of 1976, the bank rejected 55 letters of credit aggregating $3.2 million on the ground that such credits were prohibited under Commerce Department regulations. Of the prohibited credits 39 were subsequently amended and 16 were canceled.

In an effort to analyze how Arab financial and commercial circles would respond to a refusal, by U.S. financial institutions, to observe even economic boycott restrictions, subcommittee Chairman Rosenthal pointed out that numerous American firms had managed to remove themselves easily from boycott lists not by cooperating in the boycott but by retaining influential intermediaries in Arab countries:

Mr. ROSENTHAL. I appreciate your judgment and I respect your position. Do you know how people get off the boycott list?

Mr. BERKOVITCH. No, sir; I do not.

Mr. ROSENTHAL. Have you heard about it at all?

Mr. BERKOVITCH. Only to the extent that I have read about it, Mr. Chairman.

Mr. ROSENTHAL. Have you read how they get off?

Mr. BERKOVITCH. I have read some versions of how they get off.

Mr. ROSENTHAL. How do they get off?

Mr. BERKOVITCH. I have read that they are able to get off by engaging intermediates to help them get off.

Mr. ROSENTHAL. Then that would be easy to do, I would think.

Congressman Drinan, of the subcommittee, raised the same issue with the vice president and associate counsel of Chemical Bank of New York:

Mr. DRINAN. I wonder if there is any bank, or banks, in America that has demonstrated that it wants to be a profile in courage and who has said to the Arab people, "We are not going to participate in this, so you go elsewhere." Maybe these banks have not suffered at all.

Mr. BATCH. Particularly if they had no Arab business.

Mr. DRINAN. That is irresponsible.

Mr. ROSENTHAL. The clue was in Mr. Berkovitch's testimony. In 23 out of 24 cases when they met resistance, they withdrew the offending clause.

And my judgment is that that is exactly what will happen if Congress makes a clear-cut law so that there is no competitive disadvantage and everybody knows exactly where we stand.

VII. Effectiveness of Enforcement of Export Administration Act

A. COMMERCE DEPARTMENT

1. General enforcement of act

The Commerce Department testified to the subcommittee that it had gone to considerable lengths to advise U.S. citizens and firms affected by the Export Administration Act of their reporting and other responsibilities pursuant to the Act. The Director of the Department's Office of Export Administration testified that, "We conducted a massive publicity campaign early last year, in which we circularized some 30,500 firms. We reminded them of the regulations, informed them of the Government's policy discouraging them to comply. We specifically circularized banks more recently. In addition to these informative steps, the compliance actions we took, we think had a deterrent value." [18]

The Director reported to the subcommittee on all recent instances in which the Department took enforcement action against firms failing to report requests for boycott actions and information.

In response to a question from Chairman Rosenthal, the departmental witness testified that he believed that all banks were in compliance with the reporting requirements of the law:

> Mr. Rosenthal. Are you satisfied that the banks have reported in accordance with the law and the President's directive?
>
> Mr. Meyer. I believe so. I have no reason now to believe that banks are not complying. I have no evidence in mind now that any bank or any significant number of banks are receiving requests which they are not reporting to us.

2. Enforcement of act's prohibitions against compliance with civil rights-type boycott conditions

As indicated earlier in this report, there is probative evidence that U.S. financial institutions screen carefully boycott requests for the purpose of rejecting those that would discriminate on the basis of color, race, sex, religion, or national origin. The Commerce Depart-

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[18] In his December 4, 1975, letter to subcommittee Chairman Rosenthal, former Commerce Secretary Morton said:

"On three occasions, the Department has conducted widespread publicity campaigns in an effort to make certain that exporters were aware of the law and their responsibility to report. The first campaign followed immediately upon enactment of the legislation in 1965 and carried over into 1966. Another intensive campaign was launched in 1968 and carried over into 1969. The most recent publicity campaign, which began in April of this year, included direct mailings of the pertinent parts of our Export Administration Regulations to some 30,500 U.S. firms listed in the American International Trader's Index.

"More recently the Department has been publishing notices in Commerce Today and Commerce Business Daily to remind exporters of the boycott reporting requirements, to advise them of the U.S. policy in opposition to such boycotts, and requesting them not to comply with boycott-related requests. The October 13 issue of Commerce Today also carried a statement by Secretary Morton entitled "Mideast Trade and the Boycott," wherein the Secretary discussed the boycott in the light of trade with the Middle East. In addition to the foregoing, the Department has issued several press releases over the past months concerning United States policy towards the Arab boycott and enforcement actions relative to the reporting requirements.

"The effectiveness of this publicity campaign can be measured by the fact that during the first three quarters of 1975, the following boycott requests were reported:

"1st quarter—21 exporters reported boycott requests in 149 transactions;

"2d quarter—213 exporters reported boycott requests in 2,112 transactions; and

"3d quarter—304 exporters reported boycott requests in 5,284 transactions.

"This compares with 23 exporters reporting boycott requests in 785 transactions during the entire calendar year 1974."

ment's witness before the subcommittee stated his belief that the banks were in substantial compliance with the prohibitions against complying with civil rights-type boycott conditions.

All of the banks reporting to the subcommittee stated unequivocally that there have been no instances in which they have complied with discriminatory boycott restrictions and, indeed, many of these banks testified that they had returned to the issuing Arab banks, letters of credit which contained such provisions. For example, the senior vice president of Bank of America wrote to subcommittee Chairman Rosenthat that:

> It is our policy in all business transactions to avoid discrimination or the furtherance of discrimination based upon race, religion, creed, sex or national origin. To the best of our knowledge, we have not participated in the issuance of handling of letters of credit or related transactions containing conditions which tend to further a boycott of a person or company on the basis of such considerations. Our present policy and procedures have been promulgated to all appropriate offices in this bank and its Edge Acts subsidiaries. Circulars dated December 22, 1975, and February 20, 1976, enunciating these policies and procedures are enclosed for the subcommittee record.

Those internal Bank of America memorandums do contain instructions to bank employees covering reporting requirements and cautioning against participation in prohibited discriminatory-type boycott conditions.

3. Enforcement of policy declaration of Export Administration Act

Section 3(5) of the Export Administration Act of 1969, as amended, declares that "It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States." Section 369.3 of the Department of Commerce Regulations, which implements this Declaration of Policy states that:

> All exporters and related service organizations engaged or involved in the export or negotiations leading to the export from the United States of commodities, services, or information, including technical data, (whether directly or through distributors, dealers, or agents), are *encouraged and requested* to refuse to take any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting other restrictive trade practices or boycotts fostered or imposed by foreign countries against any country [friendly to the United States]. (Emphasis added.)

Although Commerce Regulations do not themselves prohibit and make illegal a U.S. firm's compliance with a so-called economic boycott request, they do warn that, "the boycotting of a U.S. firm by another U.S. firm in order to comply with a restrictive trade practice by foreign countries against other countries friendly to the United States may constitute a violation of U.S. antitrust laws."

Indeed, the U.S. Department of Justice, in the case of *United States of America* v. *Bechtel Corporation* has charged Bechtel Corporation with violating Section 1 of the Sherman Antitrust Act. The U.S. Government has charged that Bechtel has violated the antitrust laws by refusing to deal with persons and firms blacklisted by Arab League countries in connection with major construction projects in such countries.

Moreover, at various times and in various ways the President of the United States and the heads of affected governmental departments and agencies have urged U.S. citizens and firms to adhere to the "declaration of policy" of the Export Administration Act of 1969 and "to refuse to take any action . . . which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States." The moral position of the United States (and, perhaps, under the antitrust laws, the legal requirement as well), was referenced by Chairman Rosenthal in a question to a bank witness before the subcommittee:

> Mr. ROSENTHAL. You are a lawyer and maybe you would want to answer this. Now the Congress in the Export Administration Act has set down policy. It did not make it illegal to comply with an economic boycott, but it said that it is against the United States' principles. The President has said that; the Chairman of the Federal Reserve Board has said that; the Comptroller of the Currency has said that; the head of the FDIC has said that. How do you justify violating all of those precepts?

If it is a moral principle of the U.S. Government that U.S. firms should be discouraged from complying with economic boycott requests, then it would seem to be appropriate to examine whether and to what extent the Department of Commerce and the Federal bank regulatory agencies—which are responsible for implementing the spirit as well as the letter of the Export Administration Act—have carried out their responsibilities under the law and policy.

The Director of the Office of Export Administration testified repeatedly that the Department had gone to great lengths to apprise all affected citizens and firms of the legal and policy requirements of the law:

> Mr. MEYER. As I indicated earlier, we have advised the banks of the Government's policy. We have notified them of the regulations encouraging them not to comply. We have drawn to their attention the fact that they are prohibited from complying in certain instances. We took pains to inform the banks as well as we could of our regulations of the Government's policy.[19]

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[19] Additional examples of recent departmental actions designed to bring about compliance with government policy, are contained in the December 4, 1975, Morton letter:
"More recently the Department has been publishing notices in Commerce Today and Commerce Business Daily to remind exporters of the boycott reporting requirements, to advise them of the U.S. policy in opposition to such boycotts, and requesting them not to comply with boycott-related requests.
"In August of this year Mr. Seymour Graubard, National Chairman of the Anti-Defamation League of B'nai B'rith, advised the Secretary that in the course of examining some

There is strong evidence, however, that when financial institutions are unsure either of the full meaning of the regulations [20] or the extent to which the Department of Commerce is willing to go to enforce the policy declarations of the Act, the Department has backed away from clear moral principles and relied instead on nice legal distinctions. The vice president of Chemical Bank of New York told the subcommittee, for example, that when two New York banks resisted the handling of letters of credit with economic boycott restrictions, the Department of Commerce told a U.S. exporter to have the bankers get in touch with the Department so that the banks could be told that they could handle such letters of credit:

> Mr. BATCH. You have to be apprised of what is prohibited and what is allowed and what you must report. So you have to be on base with the regulations, and you have to follow them.
>
> We also attended meetings and seminars whenever we could get some information on what those regulations meant. And in early December a representative from Commerce, I think it was the Director of Operations, addressed a group at the New York Chamber of Commerce. And there were about 300 people in the hall.
>
> One woman, who was a representative of an exporter, stood up and said, "I have trouble with a lot of banks in New York—two in particular—who are refusing to handle my incoming letters of credit."
>
> The Director of Operations for Commerce replied to that by saying, "Have the banker get in touch with us and we will read the regulation to him. He is not prohibited from passing through those letters of credit to you."
>
> So we are listening to the regulator speak directly on this issue and we find no prohibition or intended prohibition and no mention of "This is another attempt to convey the policy of the United States."
>
> All they were doing was exercising their authority under the regulations to acquaint people with the lack of prohibition on the second category of clauses.

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trade opportunities recently disseminated by the Department of Commerce, he had found a bid tender for the purchase of pre-cast houses by the Government of Iraq which contained a provision excluding the use of materials of Israeli origin and materials manufactured by firms boycotted by the Government of Iraq.

"The Secretary of Commerce at the same time undertook a thorough review of the policies and practices of the Department in this area. By Secretarial Circular No. 21 dated Nov. 26, 1975, the Secretary announced that, effective December 1, the Department no longer would disseminate or make available for inspection any trade opportunities known to contain a boycott clause. Further, all trade opportunities originating in Arab countries which participate in the boycott will still be stamped with the second stamp referred to above, in the event a boycott request is involved at a later stage."

[20] An illustration of the fact that the Department's regulations and its policy position can confuse bank lawyers, was provided the subcommittee in a letter from First National Bank of Minneapolis: "Our concern stems from the fact that we were named among 25 major commercial banks and more than 200 U.S. corporations which, through acceptance of questioned bank letters of credit, were in effect contributing to economic war against another nation. We announced that we had been processing these bank letters of credit only as permitted under present U.S. Department of Commerce regulations. In our opinion, these regulations are ambiguous and subject to widely varying interpretations. We thus are hoping that new and more explicit regulations or specific provisions will be added to the law which will spell out in precise and definite terms the course of action to be followed by U.S. banks so as to insure equitable treatment to all nations with which the United States trades."

What the Chemical Bank's senior vice president was saying, of course, was that the financial community knew that the Department of Commerce was prepared to enforce U.S. policy against compliance with the economic boycott only so long as such enforcement did not create impediments to international trade and finance.

While acknowledging that compliance with economic boycott restrictions are not, according to the Department of Commerce's implementing regulations, violations of the Export Administration Act of 1969, it is proper and necessary to evaluate the Commerce Department's determination to implement the moral principles enunciated repeatedly by our government. And, it is appropriate to ask, whether it would not have been more in keeping with the spirit of the Export Administration Act for the Commerce Department officials who appeared at the New York Chamber of Commerce seminar to have responded to the complaint from the exporter that the refusal of the banks to honor letters of credit with economic boycott restrictions was fully in keeping of the law.

4. Handling and utilization of boycott data

(*a*) *Referrals of data.*—Under the Export Administration Act and the President's "Foreign Boycott Practices" statement of November 20, 1975, the Department of Commerce is given principal responsibility for enforcing compliance with provisions of the Export Administration Act. Nevertheless, the Federal bank regulatory agencies obviously retain a principal interest in and regulatory responsibility for the conduct of financial institutions within their jurisdiction.

Because of their continuing regulatory responsibility, the banking agencies have a need to know whether U.S. financial institutions within their jurisdiction are in violation of U.S. law or policy regarding the Arab boycott.

At the subcommittee hearings, the Director of the Office of Export Administration testified that the Commerce Department referred to the Department of Justice 617 boycott reports that indicated possible bank compliance with discriminatory restrictive conditions. But, he also testified that Commerce failed to notify the bank regulatory agencies of these referrals.

> Mr. MEYER. I did not mean to give the impression, if I did, that we were referring these to the Department of Justice for legal advice. As a matter of practice, we do refer discriminatory requests to the Department.
>
> Mr. ROSENTHAL. For what reason do you refer them to the Department of Justice?
>
> Mr. MEYER. For such action as they may wish to take.
>
> Mr. ROSENTHAL. Including possible prosecution?
>
> Mr. MEYER. Yes, sir.
>
> Mr. ROSENTHAL. And have you made any referrals to the banking agencies from the information that you have?
>
> Mr. MEYER. No, sir; we have not.
>
> Mr. ROSENTHAL. Are you familiar with the directives and the communications that the Federal Reserve Board and the Comptroller of the Currency issued in this area?

Mr. MEYER. I am generally informed on the statement that the Chairman of the Federal Reserve Board made. I am not particularly informed with respect to the statements or the actions of the Comptroller of the Currency.

Mr. ROSENTHAL. The reporting provisions of both the law and the regulations state that these reports are made to the Department of Commerce and not to the Federal regulatory agencies. In other words, the reports of the banks are sent to your office rather than to the Comptroller of the Currency or to the Federal Reserve Board. Is that correct?

Mr. MEYER. That is correct.

Mr. ROSENTHAL. And in those cases where you referred matters to the Department of Justice for such action as they may take, you also notify the bank regulatory agencies about possible violations of either law or regulation.

Mr. MEYER. To date we have not.

Mr. ROSENTHAL. It would seem to me that they have a very keen interest in this area and that they would probably be concerned about violations of their mandate. But at any rate, you have not done so?

Mr. MEYER. No, sir.

Not only did the Commerce Department fail to apprise the bank regulatory agencies of referrals to the Justice Department involving banks, but it failed to keep those agencies abreast of general bank conduct with respect to the boycott. It is difficult to understand how the Department of Commerce could fail to notify the principal overall regulators of U.S. financial institutions of the conduct of those institutions in complying with the laws and policies embodied in the Export Administration Act. It is equally difficult to understand why the bank regulatory agencies did not seek such information on their own initiative.

(*b*) *Adequacy of reporting form.*—The Commerce Department utilizes two basic forms for the reporting of boycott requests and activities. Form DIB–630P calls for a "Report of Restrictive Trade Practice or Boycott Request That Discriminates Against U.S. Citizens or Firms on the Basis of Race, Color, Religion, Sex, or National Origin." Form DIB–621P calls for a "Report of Restrictive Trade Practice or Boycott Request," of an economic nature.

Since direct bank reporting and a response to the question whether there would be compliance with the boycott request became mandatory, there has been—with one exception—a seemingly reliable flow of information to the Department on the extent of and compliance with boycott requests. That one exception, however, is a serious one that requires immediate departmental attention. Section C(11) of the economic boycott reporting form permits banks to check off a box ("d") which states that "The decision [whether to comply with the boycott requirement] will be made by another party involved in the export transaction." In the second quarter of 1976, that box was checked in 2,217 letter of credit transactions as compared to 144 transactions in the first quarter.

Since the decision whether or not to advise or confirm exporter compliance with boycott conditions is an action that can only be

made by the U.S. correspondent bank, the enormous increase in the number of check offs of box "d" raises serious questions as to whether its meaning is properly understood by the banks or meaningful as an indicator of bank boycott acquiescence.

A subcommittee check with the Director of the Office of Export Administration failed to clarify the situation.[21] The Director could not explain the large increase in the numbers of check offs nor provide a clear explanation as to the meaning of paragraph "d" in relation to bank reporting.

5. Commitment of manpower resources

It is self-evident that the effectiveness of the reporting and other requirements of the Export Administration Act is dependent, in almost total measure, on the commitment of manpower resources by the Department of Commerce to compiling data and enforcing compliance with the law's requirements. During his testimony before the subcommittee, the Director of the Office of Export Administration stated that they were devoting 5 man-years to the task of compiling boycott data and 2½ man-years to enforcing compliance with the law:

> Mr. ROSENTHAL. What is the budget of the Office of Export Administration?
>
> Mr. MEYER. It is approximately $5 million.
>
> Mr. ROSENTHAL. How many persons are responsible for compiling boycott data and enforcing compliance with reporting requirements?
>
> Mr. MEYER. With respect to the processing of the reports, we are presently devoting about 5 man-years to that.
>
> Mr. ROSENTHAL. Does that mean five people?
>
> Mr. MEYER. It will mean the equivalent of five people over the course of the year; yes, sir.
>
> Mr. ROSENTHAL. But it could mean fewer than five people, couldn't it?
>
> Mr. MEYER. It will be more than five people, but they will not necessarily be working full time.
>
> Now with respect to the compliance itself, at the present time I would estimate the resources applied to that aspect of it as 2½ man-years.
>
> Mr. ROSENTHAL. Yours is the only agency that views a full vista of violations because yours is the only agency that gets reports from all of the institutions that are involved in this area. Isn't that correct?
>
> Mr. MEYER. That is correct.
>
> Mr. ROSENTHAL. And you are devoting 2½ man-years to reviewing this area.
>
> Mr. MEYER. In terms of compliance, that is correct at the present time. We have other resources which can be brought into play. We are presently engaged in adding to the resources.

Subsequent to the hearings, the subcommittee was advised by letter that the Department's witness "overlooked the temporary help that we

[21] Telephone interviews of August 27 and September 1, 1976.

have obtained to cope both with the greatly increased number of reports we now are receiving and with the compliance program. The Office of Export Administration currently is allocating approximately 4 man-years of its permanent staff to the administrative tasks directly related to the processing and compilation of boycott data and 3½ man-years of its permanent staff to the compliance aspect. In addition, the office has augmented its permanent staff with three temporary professionals for report review and data tabulation tasks; with seven temporary clerks for support functions, and with one temporary clerk in the compliance area."

Whether this commitment of resources is sufficient for the purpose of carrying out the mandate of the Export Administration Act and other requirements, is an open question so far as this report is concerned. But given the hundreds of thousands of reports that are filed annually with the Department and the failure of the Department to circulate these reports to other interested departments and agencies, the previous question could conceivably be answered in the negative.

B. FEDERAL RESERVE BOARD AND OTHER BANKING AGENCIES

In a June 3, 1976, letter to subcommittee Chairman Rosenthal, Chairman Arthur Burns of the Federal Reserve Board commented on the moral significance of the Arab boycott of U.S. firms. In that letter, Chairman Burns made several key points: First, he stated his personal opposition to the boycott; second, he stated that U.S. financial institutions may have a special responsibility to observe U.S. policy on the boycott because "they depend upon government licenses and privileges that are distinct from . . . other businesses in which there is little or no government involvement"; third, he said that U.S. financial institutions advising or confirming letters of credit with boycott conditions are giving effect to the boycott; and, fourth, he reported that some bankers, "cognizant of the moral imperative of the Export Administration Act, have voluntarily refused to give support to the boycott, yet because of the uncertainty in this area even those banks have been put under strong pressure to process letters of credit originating in the Middle East as long as their competitors continue to do so."

Although the involvement of the Federal Reserve Board, Comptroller of the Currency and Federal Deposit Insurance Corporation with respect to the boycott has been limited to the circulation of a handful of letters to banks within their jurisdiction, the importance of these letters must not be underestimated in view of the wide-ranging regulatory authority of these Federal agencies over the banking community. While it is unclear whether any of the Federal bank regulatory agencies could take disciplinary action against a bank that refused to comply with U.S. policy as to the boycott,[22] each of the bank agencies has recognized and affirmed that American banks have "public service functions" which could create legal obligations over and

[22] The General Counsel of the Board of Governors of the Federal Reserve System, John D. Hawke, Jr., told the subcommittee that, "While the Board has ample authority to take enforcement measures with respect to banks that engage in boycott activities that violate a clear statutory prohibition or even a regulation adopted by another agency of government, our legal staff has serious doubt about the Board's ability to take regulatory or coercive corrective action with respect to boycott practices that are not prohibited by law or regulation [i.e., economic boycott restrictions]".

above those explicitly mandated by statutory language. Chairman Burns raised this possibility in his June 3, 1976, letter when he wrote that:

> There is a significant question in my mind whether the Congressional declaration of policy that the United States "oppose" boycotts against friendly foreign nations does not impose responsibilities upon private businesses that depend upon government licenses and privileges that are distinct from those imposed upon other businesses in which there is little or no government involvement. In December of last year the Board of Governors published a statement with respect to boycott practices suggesting that the commercial banking business—which benefits substantially from such activities of the U.S. government as the provision of deposit insurance, the operation of the Federal Reserve System, and the issuance of national bank charters—may well be viewed as a business having such special responsibilities.

Moreover, the May 26, 1976, memo from the FDIC to chief executive officers of insured State nonmember banks and the February 24, 1975, Banking Bulletin from the Office of the Comptroller of the Currency to presidents of all national banks, each referenced the "public service function" of American banks.

While it is not possible for the subcommittee to adjudicate the issue of whether special legal obligations are imposed on banks because of their special charters and "public" character, that open-ended question (together with the broad regulatory powers of the banking agencies over the financial community) invest the banking agencies' actions on the boycott issue with special significance.

On December 12, 1975, the Federal Reserve Board in Washington issued a letter "to the Presidents of all Federal Reserve banks and offices in charge of branches," which seemed to incorporate the view that special legal requirements are enforceable by regulators against banks because, in the words of the letter, "banking is clearly a business affected with a public interest." Specifically, the Board wrote that, "Banking institutions operate under public franchises, they enjoy a measure of governmental protection from competition, and they are recipients of important government benefits. The participation of a U.S. bank, even passively, in efforts by foreign nations to effect boycotts against other foreign countries friendly to the United States—particularly where such boycott efforts may cause discrimination against U.S. citizens or businesses—is, in the Board's view, a misuse of the privileges and benefits conferred upon banking institutions."

The December 12 letter continued, "One specific abuse that has been called to the attention of the Board of Governors is the practice of certain U.S. banks of participating in the issuance of letters of credit containing provisions intended to further a boycott against a foreign country friendly to the United States... Such provisions go well beyond the normal commercial conditions of letters of credit and cannot be justified as a means of protecting the exported goods from seizure by a belligerent country. Moreover, by creating a discriminatory impact upon U.S. citizens or firms who are not themselves the

object of the boycott such provisions may be highly objectionable as a 'secondary' boycott."

That this letter clearly implies a special, legally enforceable obligation on banks concerning compliance with even an economic boycott, was discerned by the banks themselves. As a consequence, the president of the Federal Reserve Bank of New York, Paul A. Volcker, wrote to the Board of Governors on January 12, 1976, and raised the following question with respect to the Board's December 12 letter:

> While it is our understanding that the Board's intention was not to impose further obligations more severe than those imposed by Commerce regulations on all U.S. firms it is that point, that we feel requires further clarification, and we would appreciate the Board's confirmation of our understanding.

In a January 20 response to the Volcker letter, the Board appeared to back away from its earlier statements:

> The purpose of the Board's December 12 statement was to direct the attention of member banks to this policy, as well as to the possible applicability of other laws, including Federal antitrust laws. It was not intended to create new legal obligations for banks, but rather to insure that they are familiar with their existing obligations under the Export Administration regulations and other pertinent laws.

The importance to the banks of the follow-up January 20, 1976, Federal Reserve Board letter was stated at the subcommittee's hearing by the witness from Chemical Bank of New York:

> We read those letters as lawyers. I read those letters as a lawyer. The second letter from Chairman Burns, when it is read from the viewpoint of a lawyer, says that no additional legal obligation was intended. And banks are advised to follow the regulatory authority of Commerce, which has authority in this area.

Congressman Drinan of the subcommittee, raised the same issue with the witness from Morgan Guaranty Trust Company:

> Mr. DRINAN. You indicate also that you had some collaboration with other bankers and that you sought a clarification of a letter from the Federal Reserve. Does that mean that you people got together in New York and urged the Federal Reserve to reverse its position?
>
> Mr. BERKOVITCH. Before answering that last question, Mr. Drinan, I would like to correct what I think may have been a misimpression on your part that Morgan Guaranty issues letters of credit of the type described in my statement. It does not issue such letters of credit. It does, however, confirm to the beneficiaries or advise to the beneficiaries that these letters have been issued by banks in the countries mentioned in the statement.
>
> Now as to the effort to obtain a clarification from the Federal Reserve Board of its earlier letter of December 12, 1975, Morgan Guaranty is a member of the New York Clearing House Association, which consists of, I believe, 10 banks in the city of New York. And when the first letter of December

1975 was published, many of these banks felt that it was unclear as to what the purpose and the effect of that letter might have been in this boycott area. And they did, through the association, ask for clarification. And this resulted in the issuance of a second letter in January.

Mr. DRINAN. Mr. Berkovitch, would you have a letter from your bank or from the Clearing House Association that we could see as to why and on what basis you people protested the letter of Dr. Burns?

Mr. BERKOVITCH. I think, sir, that we did not protest in any letter. We felt that it needed clarification. The way in which we tried to get that clarification was by sending representatives of the Clearing House to confer with the staff of the Federal Reserve Board. I do not have nor have I seen nor am I aware of any letter which might have been sent to the Board on this subject.

The position of the General Counsel of the Federal Reserve Board is that the January 20, 1976, letter was merely a reaffirmation and clarification of the previous letter: "The Board's views were reaffirmed in a clarifying statement on January 20, 1976 * * *." Congressman Drinan challenged the General Counsel on his interpretation, as follows:

Mr. DRINAN. On another point, would you describe the pressure that Dr. Burns received from the banks after his first declaration on this matter, and why he felt compelled to clarify his mandate?

Mr. HAWKE. I do not think it is correct to say that Dr. Burns or the Board got pressure after the Board issued its December statement. The clarification was issued at the request of the President of the Federal Reserve Bank of New York who said that he had had requests from a number of banks in New York as to the scope of the Board's December 12, 1975 policy statement. Specifically, they wanted to know whether the Board was intending to impose by that statement new legal obligations on banks, other than those they were already subject to under the Export Administration Act and regulations.

The Board's clarifying statement was addressed solely to that point. And in its clarifying statement in January, the Board reiterated its basic policy statement of December 12 on the boycott. The January statement was not intended in any way to signal a retreat from the Board's basic feelings about the participation of banks in the boycott as expressed in the December 12 letter.

Mr. DRINAN. It was a retreat from the moral indignation Dr. Burns had expressed in December. He came down on a legalistic thing, saying, "I guess you are not required to do anything that you were not required to do before."

But we heard testimony yesterday that the banks did in fact get together in New York and that they brought pressure on the Federal Reserve and that they wanted a very clear statement that they are not legally bound to forego all of this

very lucrative business in the Arab world even though they are partners in the economic warfare against Israel.

But you say that there was no pressure. It is a little unusual, however, that he comes out with this so-called clarification.

C. SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission's responsibilities with respect to the Arab Boycott have been enumerated in the introductory portion of this report. With respect to registered corporations, the Chairman of the SEC summarized his agency's responsibility in this area, as follows:

> The Commission believes that the issues presented by the Arab boycott are serious matters, and it strongly condemns participation in such boycotts by American citizens and enterprises. Since this activity has surfaced, the Commission and its staff have taken an active interest in the matter and will continue to do so in the future. In this regard, the Commission intends to exercise fully its statutory powers in dealing with issues relating to the Arab boycott.
>
> As the chairman knows, the Commission's authority in this area is largely directed toward insuring that shareholders receive material information concerning the companies in which they have invested. In each instance, the need to disclose participation in a boycott in Commission filings depends upon whether or not, from the standpoint of the investor, something of a material nature has happened. The fact that, in some circumstances, disclosure of boycott participation may not be required by the Commission, of course, does not mean that the Commission is condoning it, or that the Commission believes that it is a practice that should be continued. It is instead, a question of whether the subject matter falls within our jurisdiction.
>
> The question, of course, is not solely whether the conduct is legal or illegal. That is not necessarily dispositive of our jurisdiction. The question is whether or not, legal or illegal, it is a matter of importance to investors. If the conduct is not a material matter from the standpoint of investor protection, then the issue of whether it should be disclosed, and the issue of whether it should be prohibited, are questions that Congress, in conjunction with the executive branch, has to decide, through legislation, if necessary. It is without our jurisdiction to do so.

The SEC chairman reported to the subcommittee that a meeting was held at the Commission in March, 1976, at his request, with officials of other agencies of the Federal Government for the purpose of finding out precisely what forms the boycott was taking. Chairman Hills also advised the subcommittee that several informal inquiries are underway to determine whether certain companies have violated Federal security laws by failing to disclose to their shareholders the extent of their boycott-related activities. Chairman Hills also reported that the Commission had received 55 shareholder requests that

certain information related to the boycott be included in corporate proxy statements or that questions should be included in proxy statements asking corporations to disclose more about their alleged participation in the boycott. Of 23 requests directed to the SEC for informal guidance, 16 resulted in staff no-action advice (this means that it did not appear that enough business was involved to require inclusion); and in 7 other instances, the staff declined to issue no-action advice. This meant that the staff advised the companies involved, "you proceed at your own risk if you omit these proposals and we will not provide you any comfort."

The SEC advised the subcommittee that there were a number of enforcement proceedings and investigations underway involving a company's attempt to remove itself from a boycott blacklist. Hills told the subcommittee that registration statements sometimes disclose boycott matters in filings before the Commission and that the Commission attempts to scrutinize the 10,000 or so filings.

Clearly, however, the SEC's major activity with respect to the boycott is in the area of requiring public disclosure to stockholders when compliance with the boycott or failure to comply would be material to investors. In this regard, subcommittee Chairman Rosenthal questioned Chairman Hills on why the SEC did not establish rules and regulations governing "materiality" of boycott compliance or noncompliance rather than proceeding on a case-by-case approach:

> Mr. ROSENTHAL. Why can you not establish rules and regulations now to deal with every potential situation before the fact? Then the facts may not occur.
>
> Mr. HILLS. Since the Commission was created and began this effort back in 1934, the Commission has from time to time tried to formulate standards of materiality. And indeed when I first came to the Commission some 8 months ago, I was anxious to have guidelines on illegal or questionable corporate payments. The people on our staff, the Division of Enforcement particularly, persuaded me that we could not responsibly proceed in that way, and that we needed far more cases under our belt to see how the various ramifications might affect business and what the responsibilities of the Commission might be.
>
> I think that is a responsible way to proceed. We have been successful with it in the past. We do not have guidelines on the issue of materiality as a general subject. In specific areas, we do try from time to time to provide guidance in the type of report, which I am sure you have seen, that was given to the Senate. But until we have more cases, it is impossible to give guidelines.
>
> Mr. ROSENTHAL. I do not endorse that theory personally, and I am not sure that if I were in your position that I would do it. The FTC, as a matter of fact, is moving away from the case-by-case approach and trying to deal with general situations in a predictive way and anticipate events. You and I could sit down and write a whole host of scenarios and establish regulations to prevent them from happening.
>
> I think that for a Government agency to sit back and wait for the crime or the misdemeanor to occur and then fail to write rules prohibiting it is sort of an ostrich-like attitude.

Mr. HILLS. Mr. Chairman, in so many areas where the Commission is engaged in rulemaking, I quite agree in principle that agencies should proceed by rulemaking rather than by ad hoc decisions. But, again, we have a very limited but important role to play in defining materiality. The word "materiality" obviously does not involve just the issue of Arab boycott disclosure.

Mr. ROSENTHAL. I appreciate that. Do you think that a shareholder has the right to know whether a company that he or she has invested in, a company to whose capital a shareholder has contributed, is participating or assisting a foreign country in discriminating against American citizens and companies? Do they have a right to know that?

Mr. HILLS. It may be material, Mr. Chairman, depending upon the circumstances of the case. And as I have said, we have had only one enforcement action which is tangentially involved with that issue.

Mr. Hills acknowledged that the Commission was evaluating the use of rules and regulations governing "disclosure" and questions of "materiality":

Mr. ROSENTHAL. Are you trying to develop new regulations to deal with across-the-board disclosure problems?

Mr. HILLS. We are trying to build a new disclosure policy for the Commission.

Mr. ROSENTHAL. And to define materiality?

Mr. HILLS. In the course of building new policy, we hope to provide better guidance as to what and what is not appropriate for the filings.

Mr. ROSENTHAL. When do you expect these regulations to be available?

Mr. HILLS. The Commission's Advisory Committee has been working for 3 or 4 months. We have six staff people working on it essentially full time. We have made a public commitment to have it done within 18 months of the time we began, but we expect to have various statements from time to time along the way.

But, importantly, the SEC Chairman advised the subcommittee of his doubts about the rulemaking approach and its applicability to the Arab boycott situation:

Mr. DRINAN. You could do this by regulation, couldn't you? You don't need a statute.

Mr. HILLS. It is not clear to me that we could. We have the right to require information, again, significantly related to the business activities of a company. The Commission, of course, has limited jurisdiction with respect to the composition of underwriting syndicates.

If I may, I would say again something which is difficult to say, but which is a candid observation of the responsibility of the Commission. We have a small Commission, which I think is important to bear in mind when considering the volume and nature of work that we do. It is terribly important that we do the job we are primarily responsible for to this

Congress. We can dilute and erode the capacity of the Commission to do that job if we try to do too many other things that are not related to the disclosure of material facts concerning the business activities of the securities issuers.

I by no means categorically exclude or include this area of the Arab boycott. It is a significant matter. I am just saying that we have done well in the past by proceeding cautiously. I think the Commission's record, as I have said earlier with respect to questionable payments abroad, is a spendid one. I have no doubt but that we will proceed in this area with the same kind of care and eventually come up with a decision that is responsible.

* * * * *

Mr. ROSENTHAL. Is it really going to take that long to do these regulations?

Mr. HILLS. In this area of deregulation, I much prefer the word "policy" to regulations. We are going to create a new disclosure policy. And that disclosure policy will be involved in all kinds of things, including such areas as the quality of management. This is really the best way to label the type of inquiry that we are involved in here. But I must say that particular aspects of the Arab boycott may involve serious economic repercussions as well.

Mr. ROSENTHAL. Is it possible that it can be done in a shorter period of time?

Mr. HILLS. It would be wrong for me to overstate the relevance of our disclosure reexamination to the subject of the Arab boycott. In terms of creating a meaningful disclosure policy, matters such as the boycott will necessarily be taken care of and will be considered.

APPENDIX

U.S. DEPARTMENT OF COMMERCE
DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
BUREAU OF EAST-WEST TRADE
OFFICE OF EXPORT ADMINISTRATION

PART 369
RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

§ 369.1

GENERAL POLICY

Section 3(5) of the Export Administration Act of 1969, as amended, declares that it is the policy of the United States "to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States." The portion of Section 4(b)(1) of the Act implementing this policy provides that "all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in . . . [Section 3(5)] must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of that Section."

§ 369.2

DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

(a) *Prohibition of Compliance with Requests*

All exporters and related service organizations (including, but not limited to, banks, insurers, freight forwarders, and shipping companies) engaged or involved in the export or negotiations leading towards the export from the United States of commodities, services, or information, including technical data (whether directly or through distributors, dealers, or agents), are prohibited from taking any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting a restrictive trade practice fostered or imposed by foreign countries against other countries friendly to the United States, which practice discriminates, or has the effect of discriminating, against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin.

(b) *Examples of Requests*

To be subject to the requirements of this § 369.2, the discrimination sought to be effectuated by the request must be directed at a particular race, color, religion, sex, or national origin. There are many words or phrases that could place a request in this category. Examples are inquiries as to the place of birth or the nationality of parents of employees, stockholders, or directors, or inquiries as to whether they are "Jewish," "negro," "female," etc. Further examples are inquiries using any code words to further or support discrimination on the basis of race, color, religion, sex, or national origin. The following are examples of types of documents in which such requests might originate, but should not be interpreted as comprehensive.

(i) A questionnaire asking whether a U.S. firm is owned or controlled by persons of the Jewish faith, or whether it has Jews on its board of directors, or inquiring as to the national origin of a U.S. firm's stockholders or directors. This type of inquiry may also take the form of a required certification. (Similar questions aimed at determining whether a U.S. firm is owned or controlled by Israeli nationals would not fall in this category, but would be covered by § 369.3.)

(ii) A contractual clause that would prohibit using the goods or services of a Jewish subcontractor.

(iii) A requirement that a U.S. firm not send persons of a particular religion to a country where it performs services. (A general requirement that a U.S. firm performing services in a country comply with all laws and administrative practices of the country is not deemed *per se* to constitute a restrictive trade practice for purposes of this § 369.2. However, agreeing to such a requirement does not authorize the firm to cooperate with a country's discriminatory visa restrictions by failing to submit visa applications for any of its qualified employees of a particular religion. Such action would constitute a prohibited act of discrimination.)

§ 369.3

OTHER RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

(a) *Policy Concerning Compliance with Requests*

All exporters and related service organizations engaged or involved in the export or negotiations leading to the export from the United States of commodities, services, or information, including technical data, (whether directly or through distributors, dealers, or agents), are encouraged and requested to refuse to take any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting other restrictive trade practices or boycotts fostered or imposed by foreign countries against any country not included in Country Groups S, W, Y, or Z.* It should be noted that the boycotting of a U.S. firm by another U.S. firm in order to comply with a restrictive trade practice by foreign countries against other countries friendly to the United States may constitute a violation of United States antitrust laws.

(b) *Examples of Requests*

Basically, this Section covers restrictive trade practice requests to implement *economic* sanctions applied by one country against another country friendly to the United States. These are aimed at restricting certain types of business relationships that U.S. firms might otherwise undertake. The requests may be aimed at a particular country, nationals of that country, or firms or organizations that may be involved in commercial or other activity with a particular country. They may take the form of a request for a certification as to the "nationality" of individuals (e.g. "Israeli" or "South African," as opposed to national origin or ethnic background), the country of origin of the goods, or the absence of a firm from the "blacklist" of a country or group of countries. The following are other examples of requests in this category, but should not be interpreted as being comprehensive.

(i) A request for information as to whether the U.S. exporter or any subsidiary or affiliate of the U.S. exporter has, or intends to have, any stockholders, owners, employees, or officers who are nationals of a boycotted country.

(ii) A request for information as to whether the U.S. exporter or any subsidiary or affiliate of the U.S. exporter has, or intends to have, any business relationship with a boycotted country or a national of a boycotted country. These business relationships include, but are not limited to, trade in commodities or technical know-how, licensing arrangements, advertising or promotion of sale of goods originating in a boycotted country, or use of such goods as components in a manufacturing process.

(iii) A request for information as to whether the U.S. exporter or any subsidiary or affiliate of the U.S. exporter does any business, or intends to do any business, with any firm that has a business relationship with a boycotted country or a national of a boycotted country.

(iv) A request for information as to whether the U.S. exporter or any subsidiary or affiliate of the U.S. exporter has any investments, including branches, subsidiaries, affiliates, or holdings, or any commercial or legal representation in a boycotted country, or a business firm located in, or doing business in, a boycotted country.

(v) A restriction prohibiting the U.S. exporter or any subsidiary or affiliate of the U.S. exporter from using shipping or transportation facilities that are "blacklisted" by the importing country. (However, a request or restriction solely precluding the export of commodities to the importing country on (*a*) shipping or transportation facilities owned, controlled, operated, or chartered by a country or a national of a country friendly to the United States but not friendly to the importing country, or (*b*) a carrier that stops at a port in a country friendly to the United States but not friendly to the importing country prior to stopping at the port of un-

* Destinations in Country Groups S, W, Y, and Z are set forth on page 6.

lading, is not deemed a restrictive practice within the meaning of Section 3(5) of the Export Administration Act, but rather a precautionary measure to avoid any risk of confiscation of the commodities. Accordingly, these two types of shipping restrictions are exempted from the reporting requirement of this section.)

§ 369.4
REPORTING REQUIREMENTS

Any U.S. exporter receiving or informed of a request for an action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting a restrictive trade practice or boycott, as described in §§ 369.2 or 369.3 above, shall report the request to the Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D. C. 20230. Where such request is received by any person or firm other than the exporter, handling any phase of the transaction for the exporter, that person or firm (forwarding agent, shipping company, bank, insurer, etc.) must also report the request to the Office of Export Administration. The report shall be submitted in accordance with the procedure set forth in paragraph (a) of this section for requests described in § 369.2, and in paragraph (b) of this section for requests described in § 369.3. The information contained in these reports is subject to the provisions of Section 7(c) of the Export Administration Act of 1969 regarding confidentiality. If more than one document, such as an invitation to bid, purchase order, or letter of credit containing the same restrictive trade practice request is received as part of the same export transaction, only the first such request relating to the same goods or services need be reported. Individual shipments against the same purchase order or letter of credit should *not* be treated as separate transactions. However, each *different* restrictive trade practice request associated with a given transaction must be reported, regardless of when or how the request is received. For example, if a report of a request is submitted following receipt of a bid invitation and the bid ultimately results in an order with new and different restrictive trade practice requests, each such new request must be reported. Also, if a firm, in bidding on a contract, is required to answer a questionnaire and subsequently is required to place restrictive trade practice certifications (e.g., that the vessel on which the commodites are to be shipped is not blacklisted) on its commercial documents covering shipments called for in the contract, the questionnaire and the certification requirement must be reported separately. Notices of laws or edicts contained in exporters' guidebooks or similar publications, and general directives furnished by a foreign principal that are to apply uniformly to future specfic orders for goods or services, need not be reported unless such a blanket notice or directive is to be applied to a particular purchase order or similar instruction to furnish goods or services.

(*a*) ***Reporting Requests Covered By § 369.2*** Each request to take any action that would further or support a restrictive trade practice or boycott in a way that would discriminate, or have the effect of discriminating, against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin as defined in § 369.2, must be reported individually to the Office of Export Administration, U.S. Department of Commerce, Washington, D. C. 20230, within 15 business days of receipt. Reports required by this § 369.4(a) must be submitted on Form DIB-630P, Report of Restrictive Trade Practice or Boycott Request that Discriminates Against U.S. Citizens or Firms on the Basis of Race, Color, Religion, Sex, or National Origin. Answers to all questions contained therein are mandatory. A copy of the document or other communication containing the restrictive request must be attached to the reporting form.

(*b*) ***Reporting Requests Covered By § 369.3*** Requests to take action that would further or support a restrictive trade practice or boycott as defined in § 369.3 may be reported either individually or quarterly.

(1) **Single transaction report.** If the report

covers only a single transaction it shall be submitted to the Office of Export Administration within 15 business days from the date of receiving the request. This report shall be made on Report of Restrictive Trade Practice or Boycott Request, Form DIB–621P, revised November 1975 (earlier versions of Form IA–1014, DIB–621, or DIB–621P will not be accepted). Answers to all questions on the form are mandatory.

(2) **Multiple transactions report.** Instead of submitting a report for each transaction regarding which a request is received, a multiple report may be submitted covering all transactions (other than those described in § 369.2, which must be reported individually) regarding which requests are received from persons or firms in a single country during a single calendar quarter. This report shall be made by letter to the Office of Export Administration no later than the 15th day of the first month following the calendar quarter covered by the report. If requests are received from persons or firms of more than one foreign country, a separate report shall be submitted for each country. Each letter shall include all of the following information:

(i) Name and address of U.S. person or firm submitting report;

(ii) Indicate whether the reporter is the exporter or a related service organization and, if the latter, specify role in the transactions;

(iii) Calendar quarter covered by report;

(iv) Name of country(ies) against which the request is directed;

(v) Country where request originated;

(vi) Number of transactions to which restrictions were applicable;

(vii) The customer order number, exporter's invoice number, and letter of credit number for each transaction, if known;

(vii) Type of request received. Attach a copy of each requesting document or other form of request, or a pertinent extract thereof;

(ix) A general description of the types of commodities or technical data covered and the total dollar value, if known;

(x) The number of requests the reporter has complied with or intends to comply with. If the reporter is undecided, he is required to submit a further report within 5 business days of making a decision. If the decision is to be made by another party involved in the export transaction, that party should be identified;

(xi) Each letter submitted by a related service organization shall also include the name and address of each U.S. exporter named in connection with any requests received during the quarter. Following each name, affix the identifying numbers required in (vii) above, insofar as they are known. If this information is included in the copies of documents required by (viii) above, the separate listing may be omitted; and.

(xii) Each letter must include a signed certification that all statements therein are true and correct to the best of the signer's knowledge and belief and indicate the name and title of the person who has signed the report.

§ 369.5

EFFECT OF OTHER PROVISIONS

Insofar as consistent with the provisions of this Part, all of the provisions of the *Export Administration Regulations*, including Parts 387 and 388, apply equally to the prohibitions and the reporting requirements set forth in this Part. Attention is called particularly to the provisions of § 387.11 under which pertinent records must be kept and made available for inspection for a two-year period, and to the administrative and criminal sanctions spelled out in § 387.1 for failure to comply.

Supplement 1 - Interpretation of Part 369

It has come to the attention of the Department that exporters to certain destinations in the Middle East are being requested by entities in the importing country to certify in the commercial documentation relating to the particular transaction that certain symbols not appear on the goods to be shipped or on the packaging.

It has also become evident that there is considerable uncertainty in the export community as to whether boycott-related requests for this type of certification fall within the provisions of §369.2 or §369.3 of the Export Administration Regulations. Widely varying interpretations have been given to certain terms by exporters and related service organizations. To alleviate unnecessary hardship and uncertainty, it is necessary to clarify this matter for purposes of Part 369.

A boycott-related request that a particular religious symbol not appear on goods or packages being exported will be deemed to have the effect of discriminating against U.S. citizens or firms on the basis of religion. References to the "Star of David," "Hexagonal star," "six point star," etc., will thus be deemed to refer to a religious symbol and, therefore, to fall within the prohibitions of §369.2. On the other hand, a boycott-related request for certification with respect to the national origin of goods being exported or a particular national symbol will, in the absence of contrary evidence, be deemed to be an action in support of a foreign boycott which falls within the provisions of §369.3.

The interpretations set forth in this Supplement will be enforced prospectively. No bank should issue, notify, advise, confirm (or enter into specific commitments to issue, notify, advise, or confirm) to the beneficiary thereof, any letter of credit containing a request for a "Star of David" or similar certification. However, if a bank has issued, notified, advised, confirmed (or entered into specific commitments to issue, notify, advise, or confirm) such a letter of credit, shipments by an exporter and payments by a bank thereunder will be viewed as completion of a pending commercial transaction and not as actions in furtherance of a boycott.

This Supplement is issued solely as an interpretation of Part 369. The Department continues to urge and request exporters and related service organizations not to comply with or respond to any boycott-related request. Publication of this Supplement will, for purposes of enforcement of Part 369, be viewed as actual notification to the export community of the interpretations set forth herein.

COUNTRY GROUPS "S", "W", "Y", AND "Z"

(See §369.3(a)

Country Group S

Southern Rhodesia

Country Group W

Poland

Country Group Y

Albania
Bulgaria
Czechoslovakia
Estonia
German Democratic Republic (including East Berlin)
Hungary
Latvia
Lithuania
Outer Mongolia
People's Republic of China (excluding Republic of China (Taiwan) (Formosa))
Union of Soviet Socialist Republics

Country Group Z

North Korea
North Vietnam
South Vietnam
Cambodia
Cuba

FORM APPROVED: OMB NO. 41-R2887

FORM DIB-630P
(REV. 2-76)

U.S. DEPARTMENT OF COMMERCE
DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
OFFICE OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

REPORT OF RESTRICTIVE TRADE PRACTICE OR BOYCOTT REQUEST THAT DISCRIMINATES AGAINST U.S. CITIZENS OR FIRMS ON THE BASIS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

(For reporting requests defined in § 369.2 of the Export Administration Regulations)

A. IMPORTANT. It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. All U.S. exporters of articles, materials, supplies, or information, and related export service organizations, (1) are prohibited from taking any action, including the furnishing of information or the signing of agreements, that would have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin; and (2) are encouraged and requested to refuse to take any action, including the furnishing of information or the signing of agreements, that would have the effect of furthering or supporting other types of restrictive trade practices or boycotts against a country friendly to the United States.

Elliot L. Richardson
Secretary of Commerce

B. Reporting is MANDATORY. *See detailed instructions on back of form.*

C. CONFIDENTIAL. Information furnished herewith is deemed confidential and will not be published or disclosed except as specified in Section 7(c) of the Export Administration Act of 1969 as amended (50 USC app. 2406(c)).

1. Name and Address of U.S. Firm submitting this report:

Name:

Address:

City, State & Zip:

Telephone:

2. Are You: ☐ Exporter ☐ Bank ☐ Insurer ☐ Carrier ☐ Forwarder ☐ Other _____

If not exporter, give exporter's:

Name:

Address:

City, State, Zip:

3. Date request was received by me/us:

4. Specify type of request received and attach copy of document in which it appears:

a. ☐ Questionnaire
b. ☐ Invitation to bid
c. ☐ Trade opportunity
d. ☐ Purchase order
e. ☐ Contract
f. ☐ Letter of credit
g. ☐ Published import regulation
h. ☐ Cable or letter
i. ☐ Consular request
j. ☐ Other (Specify) _____

5. If the request relates to a specific transaction, describe the commodities or technical data involved. (The description of the commodity or technical data may conform to the description on the order or to usual commercial terminology, and may, but need not be, in terms of the Commodity Control List or Schedule B.)

Quantity	Description	Value

6. Name of country initiating request:

7. The party making the request is:

Name:

Address:

City & Country:

8. To the extent known, give:

Letter of credit no. _____

Customer order no. _____

Exporter's invoice no. _____

Other identifying marks or numbers _____

9. Additional Remarks:

10. I certify that all statements and information contained in this report are true and correct to the best of my knowledge and belief.

Sign here in ink _____ Type or print _____ Date _____
(Signature of person completing report) *(Name and title of person whose signature appears on line to left)*

FORM APPROVED: OMB NO. 41-R2305

FORM DIB-621P
(REV. 2-76)

U.S. DEPARTMENT OF COMMERCE
DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
OFFICE OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

REPORT OF RESTRICTIVE TRADE PRACTICE OR BOYCOTT REQUEST

(For reporting requests defined in § 369.3 of the Export Administration Regulations.)

A. IMPORTANT. It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. All U.S. exporters of articles, materials, supplies, or information, and related export service organizations, (1) are prohibited from taking any action, including the furnishing of information or the signing of agreements, that would have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin; and (2) are encouraged and requested to refuse to take any action, including the furnishing of information or the signing of agreements, that would have the effect of furthering or supporting other types of restrictive trade practices or boycotts against a country friendly to the United States.

Elliot L. Richardson
Secretary of Commerce

B. Reporting is MANDATORY. *See detailed instructions on back of form.*

C. CONFIDENTIAL. Information furnished herewith is deemed confidential and will not be published or disclosed except as specified in Section 7(c) of the Export Administration Act of 1969 as amended (50 USC app. 2406(c)).

1. Name and Address of U.S. Firm submitting this report:

Name:

Address:

City, State, & Zip:

Telephone:

2. Are You: ☐ Exporter ☐ Bank
(Check one) ☐ Insurer ☐ Carrier
☐ Forwarder
☐ Other _____

If not exporter, give exporter's:
Name:
Address:
City, State, Zip:

3. To the extent known, give:
Letter of credit no. _____
Customer order no. _____
Exporter's invoice no. _____
Other identifying marks or numbers _____

4. Name of country(ies) against which request is directed:

5. Name of country initiating request:

6. Date request was received by me/us:

7. The party making the request is:

Address _____ City & Country _____

8. Specify type of request received and attach copy of document in which it appears:

a. ☐ Questionnaire
b. ☐ Invitation to bid
c. ☐ Trade opportunity
d. ☐ Purchase order
e. ☐ Contract
f. ☐ Letter of Credit
g. ☐ Published import regulation
h. ☐ Cable or letter
i. ☐ Consular request
j. ☐ Other (Specify) _____

9. If the request relates to a specific transaction, describe the commodities or technical data involved. (The description of the commodity or technical data may conform to the description on the order or to usual commercial terminology, and may, but need not be, in terms of the Commodity Control List or Schedule B.)

Quantity	Description	Value

10. Additional Remarks:

11. Action:
a. ☐ I/We have not complied and will not comply with this request.
b. ☐ I/We have complied with, or will comply with this request.
c. ☐ I/We have not decided whether I/we will comply with this request and I/we will inform the Office of Export Administration of my/our decision within 5 business days of making a decision.
d. ☐ The decision will be made by another party involved in the export transaction. The name of that party is:

12. I certify that all statements and information contained in this report are true and correct to the best of my knowledge and belief.

Sign here in ink _____ Type or print _____ Date _____
(Signature of person completing report) *(Name and title of person whose signature appears on line to left)*